

REMARKS

In the amendment, applicant has amended independent claim 1 to define the fact that the decorative laminates comprises an upper most and lower visible service. The upper most surface comprising a decorative abrasion resisting thermosetting laminate and the lower visible service consist of a balance layer. There is nothing inconsistent with a lower visible surface consisting of a balance layer as recited in independent claim 1 and the presence of glue, such as in claims 17 or even a conductive, material in the balance layer, as in claims 24-29, 31-36, 65 and 65, which are dependent directly or indirectly, on claim 1. Applicant respectfully submits that the claims specifically recite what applicants originally disclosed, i.e. that the balance layer consists of a single polymer, and the single polymer is as specified in the original disclosure. Whether or not the polymer contains other materials which are not polymeric, i.e. conductive materials, such as specified in the dependent claims, or the balance layer bonded to a core by means of a glue, are not at all inconsistent with the fact that the lower visible surface of the decorative laminate is a balance layer. Applicant therefore respectfully submit, the examiner's rejection of the claims under 35 U.S.C. § 112, second paragraph is clearly misapplied and withdrawal of the rejection is respectfully requested.

Reconsideration of the previous prior art rejections is respectfully requested in view of the following comments.

Specifically in rejecting claims 1, 2, 10 -12, 14- 17, 30- 32, 37-55, 59, 60, 63 and 64 under U.S.C § 103(a) as being unpatentable over Sjoberg et al (W 02/47906) in view of either Min (U.S. Patent 6,093,473) or JP 01310058 and Moebus (WO 01/21366) as well as the English equivalent thereto (U.S. Patent 6,761,961) is respectfully requested.

The examiner does not at all attempt to address the fact that none of these references either singularly or in any possible combination, still fail to teach a balance layer which consists of a single polymer layer, the polymer consisting of an expanded physically cross-linked olefin polymer.

Although applicant notes that the examiner goes into great detail in talking about other features of the claimed invention not one sentence is mentioned in Sjoberg concerning the balance layer.

The secondary references (Min or JP 01310058) do not correct the deficiencies.

In Min, an abrasion resistant laminate is formed by laminating a wear resistant durable multilayer top assembly to a base layer formed from an inexpensive water resistant polymeric substrate. See, for example the abstract and column 8 lines 11-31. It is only with this polymeric substrate that Min discusses a balance layer laminated onto the bottom surface of the polymeric substrate to provide balance, reduce curling and warping of the product and to provide a soft cushion, see for example column 8 lines 32-36. Min teaches that “virgin polyvinyl chloride appears to be the most effective in minimizing curling when using a recycled vinyl polymeric substrate”.

However Min does not teach or suggest the claimed invention which is a balance layer consisting of an expanded physically cross-linked poly olefin with closed cells as expressed in independent claim 1 and as found in the original disclosure, for example at the foot of page 2 of the specification. Thus even though Min may teach polyvinyl chloride of being either a virgin or soft type, neither type of material meets the limitations of independent claim 1, nor any of the claims directly, or indirectly, dependent thereon.

JP 01310058 also does not cure the deficiency in the proposed combination of Sjoberg and Min.

JP’058 illustrates a cushion material 5 in figure 3 of the drawings. However, there is no disclosure, and the examiner has pointed to no part of JP’058, which teaches the claimed “expanded physically cross-linked polyolefin with closed cells” as recited in independent claim 1. At best JP’058 may teach foamed rubber or foamed materials but does not teach a physically cross-linked

polyolefin with closed cells, as instantly recited. Accordingly, the rejection still fails to establish a case of obviousness for the claimed invention.

Lastly, Moebus (either the WO published application or the U.S. 6,761,961 Patent) are cited to correct the forgoing deficiencies in the proposed combination of references. While Moebus is cited to show other features of the claimed invention he is not cited to show the features of the balance layer as instantly claimed by applicant. For the foregoing reasons, it is respectfully submitted that the cited references, and any possible combination, cannot possible meet the claimed limitations. Accordingly withdrawal of the rejections is respectfully requested.

Reconsideration of other prior rejections citing Sjoberg, either one of Min, JP'058 and Moebus, in view of one or more secondary references is respectfully requested.

None of the secondary references cited in combination with Sjoberg, either one of Min, JP'058 and Moebus, correct the forgoing deficiency and thus also fails to establish a case of obviousness for the claimed invention.

The alternative rejections of claims 1, 2, 10-12, 14-17, 30-32, 37, 38, 46-50, 54, 55, 59, 60 and 64 rejected under 35 U.S.C. § 103(a) as being unpatentable over JP'058 in view of Sjoberg and Moebus also fails to establish a case of obviousness.

As noted above, none of these references teach the balance layer as instantly claimed. For the foregoing reasons, the proposed combination still does not teach or make obviousness the claimed invention. Withdrawal of the rejection is therefore respectfully requested.

Similarly the alternative rejection of JP'058, Sjoberg and Moebus as applied above, and further in view of one or more secondary references, also fails to establish a case of obviousness as none of these additional secondary references correct the foregoing deficiencies as noted above in

failing to teach the balance layer as instantly claimed. Accordingly withdrawal of all rejections based on the prior art is respectfully requested.

Reconsideration of the previous double patenting of the obviousness type is respectfully requested.

None of the claims of co-pending application 11/129,497 are in fact patented. Therefore because the final version of the claims of co-pending application 11/129,497 have not been determined, nor patented, and it is not known whether such claims remain in the form as instantly claimed or whether they, or the instant claims of this application will be further amended, thereby potentially obviating any future obviousness-type double patenting, Applicant respectfully requests that such double patenting of the obviousness type should be held in abeyance until at least one of the group of claims are found to be allowable. At that point, it is suggested that the claims found to be allowable be permitted to issue and applicant will reconsider filing a terminal disclaimer in the other pending application at that time in order to obviate any remaining obviousness-type double patenting issues.

Having fully responded to the preceding office action, favorable reconsideration and withdrawal of all rejections set forth therein are respectfully requested. A prompt notice of allowance is solicited

Applicant believes no fee is due with this amendment. However, if a fee is due, please charge our Deposit Account No. 14-1437, under Order No. 8688.027.US0000 from which the undersigned is authorized to draw.

Respectfully submitted,

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